

Amendment No. 739

Senate Amendment to Assembly Bill No. 319 First Reprint (BDR 34-50)

Proposed by: Senate Committee on Health and Education**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

CLP/KCR



Date: 5/15/2009

A.B. No. 319—Makes various changes relating to school employees. (BDR 34-50)



ASSEMBLY BILL NO. 319—ASSEMBLYMEN SEGERBLOM, MUNFORD, ANDERSON, KIHUEN, SMITH; AIZLEY, ARBERRY, ATKINSON, BOBZIEN, CLABORN, DENIS, DONDERO LOOP, GOEDHART, HOGAN, HORNE, KIRKPATRICK, KOIVISTO, LESLIE, MANENDO, MCCLAIN, MORTENSON, OHRENSCHALL AND STEWART

MARCH 13, 2009

Referred to Committee on Education

SUMMARY—Makes various changes relating to school employees. (BDR 34-50)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; prescribing certain rights for school employees; revising provisions relating to certain licensed employees who are reinstated after dismissal from employment; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 7 and 8 of this bill provide specified rights for a school employee in a meeting with an administrator or representative of a school district which may result in disciplinary action against the school employee, or which involves a complaint made by the school employee concerning his working conditions or the manner in which he is treated. **Section 8.5 of this bill provides that an unlicensed employee may be suspended with loss of pay at any time after a due process hearing has been held and requires an unlicensed employee who is dismissed from employment to be reinstated with full compensation, plus interest, for all missed days of work if sufficient grounds for dismissal do not exist.** Section 11 of this bill requires the board of trustees of each school district to adopt a written policy prohibiting acts or statements that are intended to convince school employees to waive the rights provided by sections 2-11 of this bill.

~~Section 12 of this bill imposes restrictions on the involuntary transfer of a licensed employee.~~

Under existing law, a licensed employee of a school district who is dismissed from employment must be reinstated with full compensation, plus interest, if sufficient grounds for dismissal do not exist. (NRS 391.314) **Section 15** of this bill requires full compensation for all missed days of work and provides that the employee is not required to mitigate damages.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 391 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 to 12, inclusive, of this act.

3 **Sec. 2.** *As used in sections 2 to 11, inclusive, of this act, unless the context*
4 *otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act*
5 *have the meanings ascribed to them in those sections.*

6 **Sec. 3.** *“Administrator” has the meaning ascribed to it in NRS 391.311.*

7 **Sec. 4.** *“Representative of a school district” means any person employed,*
8 *appointed or retained by the board of trustees of a school district to investigate or*
9 *otherwise act on behalf of the school district in any matter that may result in*
10 *disciplinary action against a school employee, or any complaint made by a school*
11 *employee concerning his working conditions or the manner in which he is treated*
12 *at work.*

13 **Sec. 5.** *“School employee” means any licensed or unlicensed person*
14 *employed by the board of trustees of a school district. The term does not include a*
15 *person who is employed on a temporary basis or a person who is employed as an*
16 *independent contractor.*

17 **Sec. 6.** *1. The provisions of sections 2 to 11, inclusive, of this act do not*
18 *apply to any school employee who is governed by a collective bargaining*
19 *agreement negotiated pursuant to chapter 288 of NRS, to the extent of any*
20 *conflict between the provisions of the agreement and the provisions of sections 2*
21 *to 11, inclusive, of this act.*

22 *2. The provisions of sections 2 to 11, inclusive, of this act apply to an*
23 *administrator if the matter may result in disciplinary action against the*
24 *administrator or if the administrator makes a complaint concerning his working*
25 *conditions or the manner in which he is treated at work.*

26 **Sec. 6.5.** *The provisions of sections 2 to 11, inclusive, of this act do not*
27 *apply to action taken by an administrator or representative of a school district*
28 *which is verbal or written and which is not investigatory in nature and is not*
29 *intended to result in the admonition, suspension, demotion, transfer or dismissal*
30 *of a school employee.*

31 **Sec. 7.** *1. Except as otherwise provided in subsection 1 of section 6 of this*
32 *act, section 6.5 of this act or other specific statute, any meeting between a school*
33 *employee and an administrator or representative of a school district that may*
34 *result in disciplinary action against the school employee is subject to the*
35 *provisions of this section.*

36 *2. If a meeting is governed by this section, the administrator or*
37 *representative of the school district shall, not less than 48 hours before the*
38 *meeting, provide written notice of the meeting to the school employee and, if the*
39 *employee is governed by a collective bargaining agreement negotiated pursuant*
40 *to chapter 288 of NRS, to the recognized bargaining agent of the employee.*

41 *3. The notice required by subsection 2 must include, without limitation:*

42 *(a) The date, time and place of the meeting;*

43 *(b) The purpose of the meeting; and*

44 *(c) The name and title of each representative of the school district that will*
45 *be present at the meeting on behalf of the school district.*

46 *4. If a meeting governed by this section is convened to consider an*
47 *allegation of improper conduct or performance by an employee, the notice*
48 *required by subsection 2 must provide the employee with notice of the specific*
49 *concern to be discussed.*

5. *If a meeting that is not otherwise subject to the provisions of this section is held between a school employee and an administrator or representative of a school district and, during the meeting, the administrator or representative raises an issue which subjects the meeting to the provisions of this section, the school employee must, upon request, be granted an immediate continuance of the meeting for not less than 48 hours. If a continuance is requested, the administrator or representative shall comply with the requirements of this section before reconvening the meeting.*

Sec. 8. 1. *A school employee who wishes to request a meeting concerning his working conditions or the manner in which he is treated at work may, in writing, notify the administrator or representative of the school district of the complaint and request such a meeting.*

2. *If a meeting is requested pursuant to subsection 1, the administrator or representative of the school district shall, not less than 48 hours before the meeting, provide written notice of the meeting to the school employee and, if the employee is governed by a collective bargaining agreement negotiated pursuant to chapter 288 of NRS, to the recognized bargaining agent of the employee.*

3. *The notice required pursuant to subsection 2 must include, without limitation:*

(a) *The date, time and place of the meeting;*

(b) *The purpose of the meeting; and*

(c) *The name and title of each representative of the school district that will be present at the meeting on behalf of the school district.*

Sec. 8.5. 1. *Except as otherwise provided in subsection 2, if sufficient grounds for dismissal of an unlicensed employee do not exist, the unlicensed employee must be reinstated with, and is entitled to, full compensation, plus interest at the rate established pursuant to NRS 99.040, for all missed days of work. The unlicensed employee is not required to mitigate his damages.*

2. *An unlicensed employee may be suspended with loss of pay at any time after a hearing has been held which affords due process. An employee may be suspended more than once in a year, but the total number of days of suspension must not exceed 20 in 1 year. Unless circumstances otherwise require, the suspensions must be progressively longer.*

3. *Any decision of a hearing officer that is inconsistent with this section is invalid to the extent of the inconsistency.*

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. 1. *The board of trustees of each school district shall adopt and enforce a written policy prohibiting administrators or agents of the school district from committing an act or making a statement which is intended to convince school employees to waive their rights pursuant to sections 2 to 11, inclusive, of this act.*

2. *The policy must include penalties for violation of the policy.*

3. *The school district shall ensure that a copy of the policy is provided to each employee who is employed by the school district. The principal of each school within the school district shall ensure that the policy is reviewed during a staff meeting at the school at least annually.*

Sec. 12. 1. ~~*An involuntary transfer of a licensed employee must be based upon licensure and seniority and may not be made as a form of discipline.*~~

2. ~~*If a licensed employee believes an involuntary transfer was made as a form of discipline, he is entitled to a hearing on that issue pursuant to the provisions of this section and NRS 391.311 to 391.319, inclusive.*~~ (Deleted by amendment.)

1 **Sec. 13.** ~~[NRS 391.311 is hereby amended to read as follows:~~
2 ~~391.311 As used in NRS 391.311 to 391.3197, inclusive, and section 12 of~~
3 ~~this act, unless the context otherwise requires:~~

4 ~~1. "Administrator" means any employee who holds a license as an~~
5 ~~administrator and who is employed in that capacity by a school district.~~

6 ~~2. "Board" means the board of trustees of the school district in which a~~
7 ~~licensed employee affected by NRS 391.311 to 391.3197, inclusive, and section 12~~
8 ~~of this act is employed.~~

9 ~~3. "Demotion" means demotion of an administrator to a position of lesser~~
10 ~~rank, responsibility or pay and does not include transfer or reassignment for~~
11 ~~purposes of an administrative reorganization.~~

12 ~~4. "Immorality" means:~~

13 ~~(a) An act forbidden by NRS 200.366, 200.368, 200.400, 200.508, 201.180,~~
14 ~~201.190, 201.210, 201.220, 201.230, 201.265, 201.540, 201.560, 207.260, 453.316~~
15 ~~to 453.336, inclusive, 453.337, 453.338, 453.3385 to 453.3405, inclusive, 453.560~~
16 ~~or 453.562; or~~

17 ~~(b) An act forbidden by NRS 201.540 or any other sexual conduct or attempted~~
18 ~~sexual conduct with a pupil enrolled in an elementary or secondary school. As used~~
19 ~~in this paragraph, "sexual conduct" has the meaning ascribed to it in NRS 201.520.~~

20 ~~5. "Postprobationary employee" means an administrator or a teacher who has~~
21 ~~completed the probationary period as provided in NRS 391.3197 and has been~~
22 ~~given notice of reemployment.~~

23 ~~6. "Probationary employee" means an administrator or a teacher who is~~
24 ~~employed for the period set forth in NRS 391.3197.~~

25 ~~7. "Superintendent" means the superintendent of a school district or a person~~
26 ~~designated by the board or superintendent to act as superintendent during the~~
27 ~~absence of the superintendent.~~

28 ~~8. "Teacher" means a licensed employee the majority of whose working time~~
29 ~~is devoted to the rendering of direct educational service to pupils of a school~~
30 ~~district.] (Deleted by amendment.)~~

31 **Sec. 14.** ~~[NRS 391.3115 is hereby amended to read as follows:~~

32 ~~391.3115 1. The demotion, suspension, dismissal and nonreemployment~~
33 ~~provisions of NRS 391.311 to 391.3197, inclusive, and section 12 of this act do not~~
34 ~~apply to:~~

35 ~~(a) Substitute teachers; or~~

36 ~~(b) Adult education teachers.~~

37 ~~2. The provisions of NRS 391.311 to 391.3194, inclusive, and section 12 of~~
38 ~~this act do not apply to a teacher whose employment is suspended or terminated~~
39 ~~pursuant to subsection 3 of NRS 391.120 or NRS 391.3015 for failure to maintain a~~
40 ~~license in force.~~

41 ~~3. A licensed employee who is employed in a position fully funded by a~~
42 ~~federal or private categorical grant or to replace another licensed employee during~~
43 ~~that employee's leave of absence is employed only for the duration of the grant or~~
44 ~~leave. Such a licensed employee and licensed employees who are employed on~~
45 ~~temporary contracts for 90 school days or less, or its equivalent in a school district~~
46 ~~operating under an alternative schedule authorized pursuant to NRS 388.090, to~~
47 ~~replace licensed employees whose employment has terminated after the beginning~~
48 ~~of the school year are entitled to credit for that time in fulfilling any period of~~
49 ~~probation and during that time the provisions of NRS 391.311 to 391.3197,~~
50 ~~inclusive, and section 12 of this act for demotion, suspension or dismissal apply to~~
51 ~~them.] (Deleted by amendment.)~~

1 **Sec. 15.** NRS 391.314 is hereby amended to read as follows:

2 391.314 1. If a superintendent has reason to believe that cause exists for the
3 dismissal of a licensed employee and he is of the opinion that the immediate
4 suspension of the employee is necessary in the best interests of the pupils in the
5 district, the superintendent may suspend the employee without notice and without a
6 hearing. Notwithstanding the provisions of NRS 391.312, a superintendent may
7 suspend a licensed employee who has been officially charged but not yet convicted
8 of a felony or a crime involving moral turpitude or immorality. If the charge is
9 dismissed or if the employee is found not guilty, he must be reinstated with back
10 pay, plus interest, and normal seniority. The superintendent shall notify the
11 employee in writing of the suspension.

12 2. Within 5 days after a suspension becomes effective, the superintendent
13 shall begin proceedings pursuant to the provisions of NRS 391.312 to 391.3196,
14 inclusive, to effect the employee's dismissal. The employee is entitled to continue
15 to receive his salary and other benefits after the suspension becomes effective until
16 the date on which the dismissal proceedings are commenced. The superintendent
17 may recommend that an employee who has been charged with a felony or a crime
18 involving immorality be dismissed for another ground set forth in NRS 391.312.

19 3. If sufficient grounds for dismissal do not exist, the employee must be
20 reinstated with , *and is entitled to*, full compensation, plus interest ~~+~~ *at the rate*
21 *established pursuant to NRS 99.040, for all missed days of work.*

22 4. A licensed employee who furnishes to the school district a bond or other
23 security which is acceptable to the board as a guarantee that he will repay any
24 amounts paid to him pursuant to this subsection as salary during a period of
25 suspension is entitled to continue to receive his salary from the date on which the
26 dismissal proceedings are commenced until the decision of the board or the report
27 of the hearing officer, if the report is final and binding. The board shall not
28 unreasonably refuse to accept security other than a bond. An employee who
29 receives salary pursuant to this subsection shall repay it if he is dismissed or not
30 reemployed as a result of a decision of the board or a report of a hearing officer.

31 5. A licensed employee who is convicted of a crime which requires
32 registration pursuant to NRS 179D.010 to 179D.550, inclusive, or is convicted of
33 an act forbidden by NRS 200.508, 201.190, 201.265, 201.540, 201.560 or 207.260
34 forfeits all rights of employment from the date of his arrest.

35 6. A licensed employee who is convicted of any crime and who is sentenced
36 to and serves any sentence of imprisonment forfeits all rights of employment from
37 the date of his arrest or the date on which his employment terminated, whichever is
38 later.

39 7. A licensed employee who is charged with a felony or a crime involving
40 immorality or moral turpitude and who waives his right to a speedy trial while
41 suspended may receive ~~no~~ *not* more than 12 months of back pay and seniority
42 upon reinstatement if he is found not guilty or the charges are dismissed, unless
43 proceedings have been begun to dismiss the employee upon one of the other
44 grounds set forth in NRS 391.312.

45 8. A superintendent may discipline a licensed employee by suspending the
46 employee with loss of pay at any time after a hearing has been held which affords
47 the due process provided for in this chapter. The grounds for suspension are the
48 same as the grounds contained in NRS 391.312. An employee may be suspended
49 more than once during the employee's contract year, but the total number of days of
50 suspension may not exceed 20 in 1 contract year. Unless circumstances require
51 otherwise, the suspensions must be progressively longer.

1 **Sec. 16.** This act becomes effective on July 1, 2009.